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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,330	09/25/2001	H. W. Holland-Letz	213150	1181
23460	7590	10/18/2005	EXAMINER	
LEYDIG VOIT & MAYER, LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STETSON AVENUE CHICAGO, IL 60601-6780			WILLIAMS, MARK A	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/963,330	HOLLAND-LEIZ	
	Examiner	Art Unit	
	Mark A. Williams	3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 September 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 120-152 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 120-152 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 120-123, 126-143, 147-149, and 151-159 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ming-Chang, US Patent Des. 351,330, in view of Marui, US Patent 4,964,192. See the below image. (Note that no patentable weight is given to the intended use functional language referring to how the handle is intended to engage a user's hand.) Ming-Chang shows a handle that may be used with a tool and the handle is configured for an assigned group of hands, the handle comprising a body having a proximal end, a distal end, and a longitudinal axis extending between the ends; the body having a finger section (note that engagement with the fingers and palm sections of a user's hand has to do with how one elects to orient the handle, and is considered intended use). The finger section extending along the longitudinal axis; and a palm section. The palm section extending along the longitudinal axis and substantially opposing the finger

section; wherein the palm section includes a distal part adjacent that distal end, a proximal part adjacent the proximal end, and a center part that lies between the distal part and the proximal part, wherein the center part has a convex portion having a three-dimensional curvature that extends over at least a portion of its circumference.

Ming-Chang discloses the claimed invention except explicit teaching of the center part being asymmetrical relative to a plane including the longitudinal axis and the maximum point of the palm section; Marui teaches this concept for the purpose of providing increased cushioning while retaining a moderate size circumference of the handle. It would have been obvious at the time the invention was made for one skilled in the art to have included in the design of Ming-Chang such a modification, as taught in Marui, for the purpose of providing increased cushioning while retaining a moderate size circumference of the handle.

As far as the claimed relationship of the parts of the invention relative to a Cartesian coordinate system, it is believed that the general design of the device is provided by the combination and thus obviously meets this relationship with the Cartesian coordinate system (see the figures of Ming-Chang and Marui).

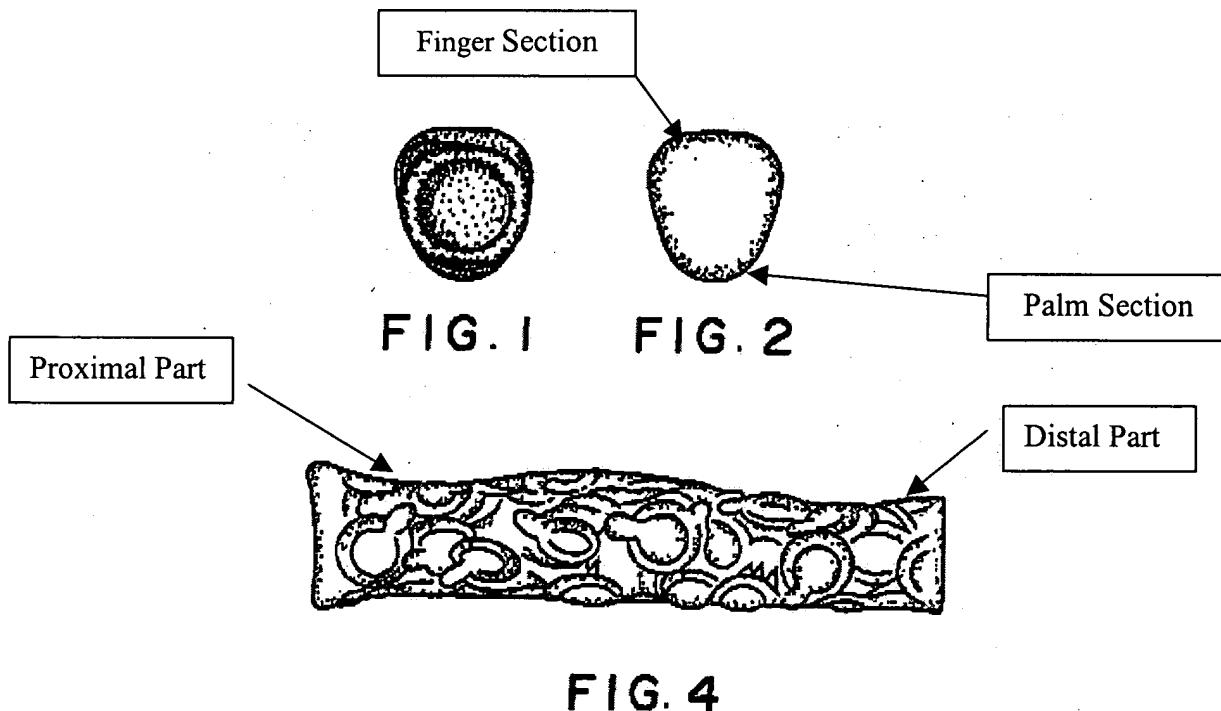
Regarding claims 121, 147, and 148, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified

the device in such ways, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Such modifications are not critical to the design and would have produced no unexpected results.

Regarding claims 151, 155, and 157, note that even though a tool is not explicitly taught, such a handle design may be used with a variety of tool types, as known in the art. Each tool obviously has a functional part since it is used to perform a function. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in such ways, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Such modifications are not critical to the design and would have produced no unexpected results.

Regarding claim 152 and 156, it would have been an obvious matter of design choice to make the different portions of the device of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. One may be motivated to

make such a change in size if the handles were used to be sold as a kit of handles of various types of tools, thus requiring handles of various sizes. Such modifications are not critical to the design and would have produced no unexpected results.



Response to Arguments

3. Applicant's arguments filed 8/15/05 have been fully considered but they are not persuasive.

Applicant argues that a three-dimensional surface that bugles outwardly as claimed is not provided by the combination. As far as the claimed relationship of a three-dimensional surface relative to a Cartesian coordinate system, it is believed that the general design of the device is provided by the combination and thus inherently meeting this relationship with the Cartesian coordinate system (see the figures of Ming-Chang and Marui). The resulting structured is not considered novel or unobvious.

Conclusion

This action is non-final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Williams whose telephone number is (703) 305-3438. The examiner can normally be reached on Monday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Williams
9/27/05

M

Brian Glessner
BRIAN E. GLESSNER
SUPERVISORY PATENT EXAMINER